

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CULBREATH,	:	
	:	
Plaintiff(s),	:	ORDER
	:	
-against-	:	17 Civ. 3406 (KMK) (LMS)
	:	
GRIFFIN, et al.,	:	
	:	
Defendant(s)	:	

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On August 15, 2018, attorney Ryan Lozar entered a notice of limited appearance on behalf of *pro se* plaintiff Jeffrey Culbreath in the above-captioned matter. The limited appearance is for the purpose of providing counsel for discovery proceedings, and for settlement discussions. DE 56. In earlier decisions relating to Plaintiff's discovery demands the undersigned has required *in camera* submission of certain allegedly protected documents (DE 35), and has stated an inclination to allow certain documents to be produced "subject to a confidentiality order, in the event Plaintiff secures pro bono counsel or retains a sufficiently qualified expert." DE 48. In light of the presence of attorney Lozar, the Court has conducted an *in camera* review of previously submitted documents which are responsive to Requests nos. 6, 8, and 11 in Plaintiff's first set of document demands, and rules as follows:

All documents identified herein as subject to production are to be produced to attorney Lozar, and are to be considered and maintained as "attorney's eyes only." The documents themselves, and the information contained in those documents, are not to be shared with Plaintiff. In the event that these documents, or their contents, are raised during a deposition, that portion of the deposition, and any accompanying exhibits, shall be marked "Confidential –

Attorney's Eyes Only," and are to be handled accordingly. In the event that these documents, or their contents, are to be shared with a proposed expert or a retained expert witness, Plaintiff's counsel shall notify Defendants' counsel in advance of such production, with at least two weeks notice before such production, to allow Defendants' counsel to raise any further concerns with the Court.

The following items have been reviewed by the undersigned *in camera*, and the undersigned has determined that they are appropriate and relevant for production. They are to be produced to attorney Lozar in accordance with the above-noted provision, within 14 days of the date of this Order:

Chemical Agents Training Program, marked Culbreath Confidential 001-027

Directive 4903, marked Culbreath Confidential 028-032

From redweld entitled "Defendants[]" Personal History Folder

Manila folder entitled "Griffin, Thomas"\*

None

Manila folder entitled "Tokarz, Mark"\*

None

Manila folder entitled "Nagy, Michael"\*

None

From redweld entitled "Grievances"

Manila folder entitled "75269-13"\*

None

Manila folder entitled "78516-14"\*

None

Manila folder entitled "78736-15"\*

None

Manila folder entitled "79241-15"\*

None

Manila folder entitled "79678-15"\*

None

Manila folder entitled "79714-15"\*

None

Manila folder entitled "80421-15"

The entire contents are to be produced. Signatures may be redacted.

Manila folder entitled "914 89444-15"

The entire contents are to be produced. Signatures may be redacted.

Manila folder entitled "9118 80582-15"

The entire contents are to be produced. Signatures may be redacted.

From redweld entitled "Grievance Nos.: 79436-15 and GH 80418-15

Manila folder entitled "GH 79436-15 (COPY)"\*

None

Manila folder entitled "GH 80418-15 (COPY)"

The entire contents are to be produced. Signatures may be redacted.

Manila folder entitled "GH 79436-15"\*

None

Manila folder entitled "GH 80418-15"

The entire contents are to be produced. Signatures may be redacted.

From redweld entitled "IAD 14/0740"

Manila folder entitled "14-0740 Eastern CF"\*

None

From redweld entitled "IAD 15/0638"

Manila folder entitled "Greenhaven C.F IAD15/0638"\*

None

From redweld entitled "IAD 15/1353 1 of 3 and 3 of 3"

Manila folder entitled "GHCF. 15/1353"

The entire contents are to be produced. Signatures may be redacted.

Manila folder with title marked out on tab, "IAD/15/1353 #3 of 3" on front

The entire contents are to be produced, including hearing tapes, three of which are marked confidential and must be maintained accordingly by attorney Lozar. Photos of all inmates also to be produced. Signatures may be redacted.

From redweld entitled ""IAD 15/1353 2 of 3"

Manila folder with title marked out on tab, "IAD/15/1353 #2 of 3" on front\*

None. These documents relate to discipline imposed on other inmates relating to the events of August 3, 2015, and would not be needed for plaintiff's case, unless defendants intend to utilize any of that information, including if defendants would be cross-examining any inmate witness to be called by plaintiff on their subsequent discipline.

The folders identified as being subject to production are marked with a yellow post-it note.

If defendants intend to use or ask about any documents from any of the above-noted files, specifically those marked with an asterisk (e.g., a May 28, 2013, Letter of Commendation

directed to Lieutenant Tokarz, any employee evaluation form, any grievance, and others), then the documents must be produced. If such documents are not produced, then there may be no questioning about their existence or contents.

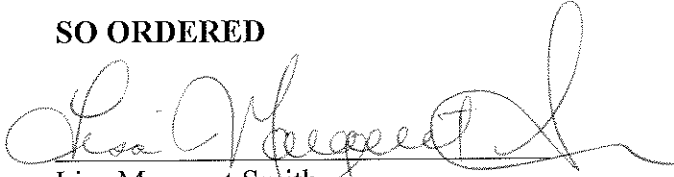
If defendants intend to call Lieutenant Carl J. Pierce as a witness in this litigation, then they must promptly produce the Lieutenant's March 26, 2018, affirmation, produced *in camera*, to attorney Lozar.

The original documents are in a carton in the Chambers of the undersigned, and defendants' counsel may retrieve them, or may request that they be shipped back, but there is no guarantee about when such shipment would be delivered.

This constitutes the Decision and Order of the Court.

Dated: August 23, 2018  
White Plains, New York

**SO ORDERED**



Lisa Margaret Smith  
United States Magistrate Judge  
Southern District of New York